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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 STEVEN MANDELAS,

11 Plaintiff,

12 v.

13 DANIEL N. GORDON, PC, et al.,

14 Defendants.

CASE NO. C10-0594JLR

ORDER DENYING
DEFENDANT'S MOTION TO
DISMISS OR STRIKE

15 This matter comes before the court on Defendant Daniel N. Gordon, PC's
16 ("Gordon") motion to dismiss or to strike pursuant to Federal Rule of Civil Procedure
17 12(b) and 12(f) (Dkt. # 8). Having considered the submissions of the parties, and
18 deeming oral argument unnecessary, the court DENIES Gordon's motion to dismiss or to
19 strike (Dkt. # 8).

20 **I. BACKGROUND**

21 Mr. Mandelas alleges the following in his amended complaint (Dkt. # 4). In 2001,
22 Defendant CACV of Colorado, Inc. ("CACV") purchased a debt that Mr. Mandelas

1 allegedly owed to a third-party creditor. (Am. Compl. ¶ 12.) On September 18, 2006,
2 Mr. Mandelas received notice of a claim filed by CACV with the National Arbitration
3 Forum (“NAF”) in an attempt to collect the debt. (*Id.* ¶ 13.) Mr. Mandelas avers that he
4 tried to contact the NAF to contest CACV’s claim, but he received no response. (*Id.* ¶
5 14.) On December 14, 2006, the NAF entered an arbitration award in favor of CACV.
6 (*Id.* ¶ 15.)

7 On February 27, 2007, Gordon issued a summons in connection with a lawsuit
8 initiated in Washington state court to confirm the December 2006 arbitration award. (*Id.*
9 ¶ 16 & Ex. B.) On January 23, 2008, Gordon filed with the state court a copy of the
10 summons; a declaration that service was effected on October 7, 2007; and an application
11 for an order to confirm the arbitration award. (*Id.* ¶ 18 & Ex. C.) Mr. Mandelas
12 contends, however, that he was never actually served in connection with this lawsuit. (*Id.*
13 ¶ 17.) On January 23, 2008, the state court entered an order confirming the arbitration
14 award, as well as a judgment against Mr. Mandelas in the amount of \$15,052.42, plus
15 12% interest from the date of the arbitration award. (*Id.* ¶ 23 & Exs. D, E.)

16 In September 2009, Defendants began to make efforts to collect the judgment. (*Id.*
17 ¶ 24.) Mr. Mandelas informed Gordon that he was unaware of the judgment that had
18 been entered against him and that he had never been served with papers in connection
19 with the judgment. (*Id.* ¶ 25.) On September 28, 2009, Gordon filed a writ of
20 garnishment to collect the January 2008 judgment. (*Id.* ¶ 26.) According to the amended
21 complaint, Gordon did not give Mr. Mandelas notice that it was filing the writ. (*Id.* ¶ 54.)
22 On October 6, 2009, the state court entered the writ of garnishment. (*Id.* ¶ 27 & Ex. F.)

1 On December 10, 2009, Mr. Mandelas's bank notified him of an order requiring
 2 attachment of funds from his bank account; this was the first time he learned that the writ
 3 of garnishment had been filed. (*Id.* ¶ 28.)

4 Mr. Mandelas claims that Gordon's and CACV's conduct violated the Fair Debt
 5 Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*; the Washington
 6 Collection Agency Act ("CAA"), chapter 19.16 RCW; and the Washington Consumer
 7 Protection Act ("CPA"), chapter 19.86 RCW. (*See generally id.*)

8 II. ANALYSIS

9 A. Motion to Dismiss

10 To survive a motion to dismiss pursuant to Federal Rule of Civil Procedure
 11 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a
 12 claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, __ U.S. __, 129 S. Ct.
 13 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). It is
 14 not enough for a complaint to "plead[] facts that are 'merely consistent with' a
 15 defendant's liability." *Id.* (quoting *Twombly*, 550 U.S. at 557). Rather, "[a] claim has
 16 facial plausibility when the plaintiff pleads factual content that allows the court to draw
 17 the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*
 18 "The plausibility standard is not akin to a 'probability requirement,' but it asks for more
 19 than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Twombly*,
 20 550 U.S. at 556). Although a court considering a motion to dismiss must accept all of the
 21 factual allegations in the complaint as true, the court is not required to accept as true a
 22 legal conclusion presented as a factual allegation. *Id.* at 1949-50 (citing *Twombly*, 550

1 U.S. at 556). “In ruling on a 12(b)(6) motion, a court may generally consider only
2 allegations contained in the pleadings, exhibits attached to the complaint, and matters
3 properly subject to judicial notice.” *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir.
4 2007). In the event the court finds that dismissal is warranted, the court should grant the
5 plaintiff leave to amend unless amendment would be futile. *Lopez v. Smith*, 203 F.3d
6 1122, 1127 (9th Cir. 2000).

7 1. Preliminary Matters

8 In its reply (Dkt. # 14), Gordon moves to strike Mr. Mandelas’s response, which
9 he filed two days after it was due. *See* Local Rules W.D. Wash. CR 7(d)(3) (“Any
10 opposition papers shall be filed and served not later than the Monday before the noting
11 date.”) The court denies Gordon’s motion to strike, but admonishes Mr. Mandelas that
12 he must comply with the court’s local rules in the future.

13 Gordon also objects to Mr. Mandelas’s filing of two exhibits with his response.
14 (*See* Resp. (Dkt. # 12) Exs. A & B.) Because a court evaluating a Rule 12(b)(6) motion
15 to dismiss is limited to reviewing only the complaint, exhibits attached to the complaint,
16 and any evidence subject to judicial notice, the court declines to consider Mr. Mandelas’s
17 submissions in conjunction with this motion to dismiss. *See Swartz*, 476 F.3d at 763.

18 2. FDCPA Claim (Count I)

19 “The purpose of the FDCPA is to protect vulnerable and unsophisticated debtors
20 from abuse, harassment, and deceptive collection practices.” *Guerrero v. RJM*
21 *Acquisitions LLC*, 499 F.3d 926, 938 (9th Cir. 2007). Section 1692f of the FDCPA
22 prohibits a debt collector from using “unfair or unconscionable means to collect or

1 attempt to collect any debt.” 15 U.S.C. § 1692f. In addition to this general ban on unfair
2 or unconscionable means of debt collection, § 1692f provides a non-exclusive list of eight
3 prohibited means of debt collection. *Id.* § 1692f(1)-(8). Whether conduct violates §
4 1692f requires an objective analysis that takes into account the “the least sophisticated
5 debtor” standard. *See Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1030 (9th Cir.
6 2010); *Guerrero*, 499 F.3d at 934. The FDCPA is a strict liability statute, which “should
7 be construed liberally in favor of the consumer.” *Clark v. Capital Credit & Collection*
8 *Serv., Inc.*, 460 F.3d 1162, 1175-76 (9th Cir. 2006) (quotation omitted). The FDCPA
9 “applies to attorneys who ‘regularly’ engage in consumer-debt-collection activity, even
10 when that activity consists of litigation.” *Heintz v. Jenkins*, 514 U.S. 291, 299 (1995).

11 Mr. Mandelas does not contend that Gordon used any of the unfair or
12 unconscionable means of debt collection enumerated in § 1692f. Rather, in Count I, Mr.
13 Mandelas invokes the FDCPA’s general prohibition against unfair or unconscionable
14 means of debt collection, and contends that Gordon and CACV violated § 1692f by (1)
15 seeking entry of a judgment against Mr. Mandelas without giving him notice (*id.* ¶¶ 36-
16 41); (2) purposefully delaying their efforts to collect the debt in order to collect additional
17 interest (*id.* ¶¶ 42-52); and (3) failing to provide notice of filing the writ of garnishment
18 as required by Washington law (*id.* ¶¶ 53-54). Gordon counters that it was not unfair or
19 unconscionable to fail to serve the complaint seeking entry of the judgment, to delay
20 efforts to collect the debt, and to fail to provide notice of the writ of garnishment.
21 Gordon relies in part on Mr. Mandelas’s allegations that he knew of the NAF action and
22 that he eventually became aware of the garnishment.

1 The court finds, viewing the amended complaint in light of the “least sophisticated
 2 debtor” standard, that Mr. Mandelas has alleged a plausible claim that Gordon used
 3 “unfair or unconscionable” means to collect the debt on behalf of CACV when it failed to
 4 provide him notice that it was seeking either entry of judgment or a writ of garnishment
 5 and intentionally delayed its collection efforts in order to increase the amount of the debt.
 6 The court therefore denies Gordon’s motion to dismiss Mr. Mandelas’s FDCPA claim.

7 3. CAA and CPA Claims (Counts II-IV)

8 In Counts II and III, Mr. Mandelas alleges that Defendants’ delay in collecting the
 9 debt and their failure to provide notice before filing the writ of garnishment violated the
 10 CAA. (Am. Compl. ¶¶ 55-59, 60-61.) He further alleges, in Count IV, that Defendants
 11 violated the CPA by operating an unlicensed collection agency or by committing an act
 12 or practice prohibited by the CAA. (*Id.* ¶¶ 63-64.)

13 Gordon contends that the court must dismiss Mr. Mandelas’s CAA and CPA
 14 claims because the CAA does not apply to law firms. Gordon relies primarily on RCW
 15 19.16.100(3)(c), which excludes from the definition of “collection agency” “any person
 16 whose collection activities are carried on in his, her, or its true name and are confined and
 17 are directly related to the operations of a business other than that of a collection
 18 agency . . . such as . . . lawyers.” Gordon seizes upon the word “lawyers” in this
 19 exclusion, and argues that because it is a law firm, it has immunity from CAA claims.
 20 Taking the allegations in the complaint as true, however, the court finds that Mr.
 21 Mandelas has properly alleged that Gordon was acting as a collection agency for CACV.
 22 The CAA defines “collection agency” as meaning and including “[a]ny person directly or

1 indirectly engaged in soliciting claims for collection, or collecting or attempting to collect
2 claims owed or due or asserted to be owed or due another person.” RCW
3 19.16.100(2)(a). Gordon satisfies this definition because it was directly engaged in
4 collecting or attempting to collect claims owed to a third party, CACV. By contrast,
5 Gordon does not satisfy the requirements for the RCW 19.16.100(3)(c) exclusion, as it
6 was not engaged in collection activities on its own behalf, such as collecting debts owed
7 to it by a client for legal services. *See LeClair v. Suttell & Associates, P.S.*, No. C09-
8 1047-JCC, 2010 WL 417418, at *6 (W.D. Wash. Jan. 29, 2010); *Semper v. JBC Legal*
9 *Group*, C04-2240-RSL, 2005 WL 2172377, at *3 (W.D. Wash. Sept. 6, 2005). Thus,
10 because the amended complaint plausibly alleges that Gordon satisfies the definition of
11 “collection agency” under the CAA, the court denies Gordon’s motion to dismiss Mr.
12 Mandelas’s CAA claims as alleged in counts II and III. In addition, because Gordon
13 challenges Mr. Mandelas’s CPA claim only on the basis that it is not subject to the CAA,
14 the court also denies Gordon’s motion to dismiss Count IV.

15 Gordon also argues that law firms cannot be collection agencies because RCW
16 19.16.250(5) prohibits any “licensee or employee of a licensee” from “[p]erform[ing] any
17 act or acts, either directly or indirectly, constituting the practice of law.” Gordon
18 contends that the *Semper* court overlooked this provision when it held otherwise. The
19 court notes that the CAA also provides that it constitutes “unprofessional conduct” for
20 certain employees of licensees to have “had his or her license to practice law suspended
21 or revoked and two years have not elapsed since the date of such suspension or
22 revocation, unless he or she has been relicensed to practice law in this state.” RCW

1 19.16.120(4)(c). This provision appears to contemplate that certain employees of
2 licensees will, in fact, practice law. The parties can explore these provisions of the CAA
3 in more detail at summary judgment. For purposes of this Rule 12(b)(6) motion to
4 dismiss, however, the court finds that Mr. Mandelas has sufficiently alleged that
5 Gordon's actions in this case satisfy the definition of "collection agency" as provided by
6 RCW 19.16.100(2) and (3).

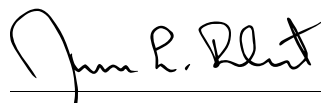
7 **B. Motion to Strike**

8 In the alternative, Gordon moves the court to strike 10 paragraphs of Mr.
9 Mandelas's amended complaint pursuant to Rule 12(f), which provides that a "court may
10 strike from a pleading an insufficient defense or any redundant, immaterial, impertinent,
11 or scandalous matter." The challenged paragraphs appear to set forth Mr. Mandelas's
12 understanding of the law governing FDCPA claims. (*See* Am. Compl. ¶¶ 1, 2, 10, 11, 29-
13 31, 33-35.) As the court does not take legal conclusions in a complaint as true in
14 evaluating a motion to dismiss, it finds no harm in Mr. Mandelas setting forth his
15 understanding of the law in his complaint. The court denies Gordon's motion to strike.

16 **III. CONCLUSION**

17 For the foregoing reasons, the court DENIES Gordon's motion to dismiss or to
18 strike (Dkt. # 8).

19 Dated this 28th day of June, 2010.

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21 
22 JAMES L. ROBERT
United States District Judge